A LAYMAN'S GUIDE TO Guardianship Conservatorship and Estate Planning

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FOREWORD

Aage Hansen

Project Director
And Executive Director
of the
Montana Association of Retarded Citizens

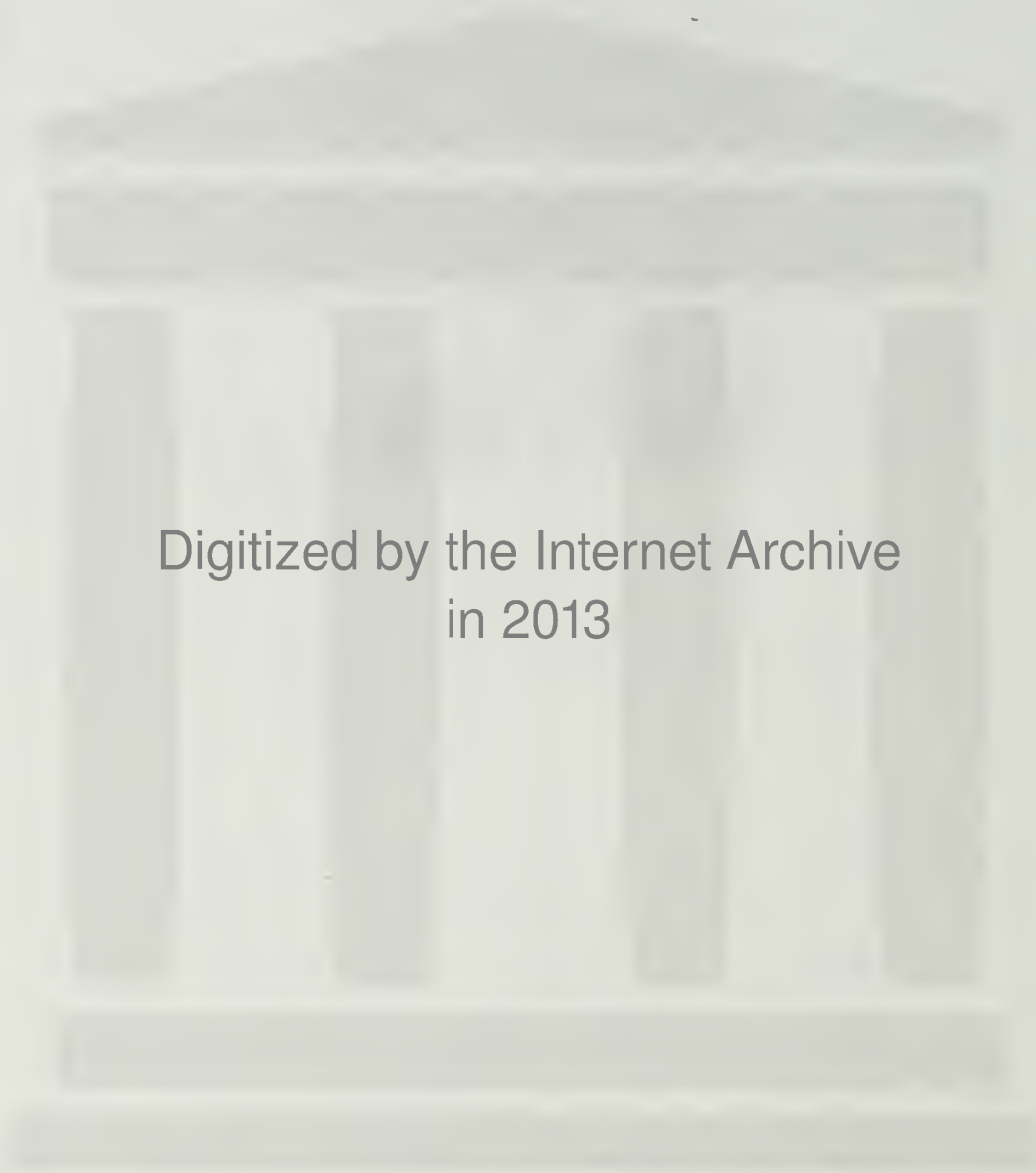
While my mentally retarded son was growing up I did not give much thought to guardianship, conservatorship, or any estate planning. However, the time now has come for the family to make some decisions regarding these matters. It all seems very easy until you sit down and start thinking it through. As parents, we have, as thousands of other parents and friends of the mentally retarded, fought for legal rights under the constitution for the mentally retarded, and a great deal of success has been attained.

I now seem to have some moral qualms about saying to the court my son is not competent to live in our society on his own. So give me the power to control his life and I will decide which happiness he will be allowed to pursue.

The burden of making the decision of granting to one person legal powers over another is awesome, and those of us who will be petitioning the court for guardianship over our adult children should make every effort to furnish all pertinent information regarding our adult children to the court, but it remains the decision of the court as to whether or not the adult child needs a guardian and whether or not the court should grant full or partial guardianship and/or conservatorship.

This Guardianship, Conservatorship and Estate Planning Guide is based on present Montana and Federal Laws. Laws are changed from time to time, and I expect this guide will need updating occasionally. As you read this guide, I think you will agree with me that the contributions of Lester Rusoff, Julio Morales, and Jan Ryles, are superb, and I am most grateful for their assistance.

Aage Hansen



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PROTECTION OF THE PERSONS AND PROPERTY OF RETARDED PERSONS UNDER THE UNIFORM PROBATE CODE

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(A layman's guide prepared for the Montana Association for Retarded Citizens)

How, in general, does the Uniform Probate Code provide for the care of the person or property of a retarded person?

The Code deals with this in several chapters. One chapter covers the appointment of guardians who, like parents, take care of the personal needs, not the property, of minors. The Code speaks of the minor, in such a case, as a "ward" or "minor ward" of the guardian. Another chapter provides for the appointment of a guardian, who, again like a parent, takes care of the personal needs of a person who, because of mental illness, mental deficiency, physical illness or disability or other reasons listed in the Code "lacks sufficient understanding or capacity to make or communicate reponsible decisions concerning his person." Under that chapter, the person for whom a guardian is appointed is called an "incapacitated person." Another chapter provides for appointment of a "conservator" to manage the property either of a minor or of a person who "is unable to manage his property and affairs effectively for reasons such as mental illness, mental deficiency, physical deficiency or disability . . . . . ." The person for whom a conservator is appointed is called a "protected person."

In the case of a retarded child who seems likely to need special care and supervision for life, presumably a guardian can be appointed under the chapter dealing with incapacitated persons and the guardianship will not terminate automatically when the child reaches the age of majority. A conservator can also be appointed at the same time if the child has property that needs management.

GUARDIANS OF MINORS

How does a person become a guardian of a minor?

A court may appoint a guardian, or a parent of a minor may in his will appoint a guardian. An appointment by will becomes effective when the guardian files an acceptance in court. The guardian then notifies the minor and the person taking care of him or his nearest adult relatives. 91A-5-201; 91A-5-202

Can a minor object if he does not like a guardian appointed for him?

If he is fourteen years old or older, he can file an objection in court and the court apparently may accept or reject the objection. 91A-5-203

Can a guardian be appointed for a minor whose parents are still alive?

Yes, a guardian can be appointed for a minor if parental rights have ended or been suspended by events or by a court order. 91A-5-204

What requirements must a person meet to become a guardian of a minor?

The Code specifies only that an appointment must be in the best interests of the minor. It gives first choice to a person named by a minor who is fourteen years old or older, unless the court finds appointment of that person contrary to the best interests of the minor. 91A-5-206

Can a guardian be appointed without the knowledge of a minor or his family?

No, notice of the time and place of a hearing must be given to the minor, if he is fourteen or older, to the person who has been caring for him, and to his parent. 91A-5-207

Does anyone represent a minor in a proceeding to appoint a guardian?

The court may appoint an attorney for the minor if the court finds that his interests may not be adequately represented. 91A-5-207

What are the powers and duties of a guardian of a minor?

A guardian of a minor has the powers and duties of a parent, except that he need not provide for the minor from his own funds and is not liable to other persons for acts of the minor. He must take care of the minor's personal effects and get a conservator appointed for the property of the minor if necessary. He may receive money or property due to the minor and must spend what is needed for the support and education of the minor. He must save any funds not needed currently or pay them to a conservator, if there is one. He may not pay himself for his services, from the minor's funds, without the approval of a court or a conservator. 91A-5-209

Does anyone supervise a guardian?

A guardian must report to the court as rules of the court require or on petition of any person interested in the minor. 91A-5-209

When does a guardianship of a minor end?

It ends if the guardian dies, resigns with approval of the court, or is removed by the court. It ends if the minor dies, is adopted, marries, or becomes an adult. 91A-5-210

Who may seek removal of a guardian?

Any person interested in a ward's welfare or the ward, if he is fourteen years old or older, may petition a court for removal of the guardian. 91A-5-212

Does anyone represent a minor in an action to remove his guardian?

The court may appoint an attorney for the minor if it finds that his interests may not be adequately represented. 91A-5-212

GUARDIANS OF INCAPACITATED PERSONS

Can a parent pick a guardian for an incapacitated person?

A parent can name a guardian in his will or in another writing signed by the parent. 91A-5-301; 91A-5-311

How is a guardian appointed if a parent does not pick one?

Anyone interested in the person's welfare may ask a court to appoint a guardian for him. 91A-5-301(1)

In a proceeding to appoint a guardian for a person, who makes sure that the appointment is in his best interest?

He has a right to be represented by a lawyer, and if he does not select a lawyer himself, the court will appoint a lawyer or some other official to represent him.

A doctor will examine him and report in writing to the court, which will send a person, called a "visitor" to interview the doctor. The visitor will also visit the place where the person involved lives and the place he will live if the proposed person is appointed his guardian.

The proceedings in court will be subject to the usual protections, including cross-examination of the doctor, the visitor, and any other persons, and trial by jury unless the attorney for the person involved asks the court to hear the case without a jury. 91A-5-303

If it appears that a guardian is not suitable, can the guardian be removed?

At the request of the ward or of any person interested in his welfare, a court may remove a guardian and appoint another, if that is in the best interests of the ward. 91A-5-307

If a relative is appointed guardian but finds the burden too heavy, can he resign?

He may ask the court to accept his resignation and appoint another guardian. 91A-5-307(1)

What are the powers and duties of a guardian?

A guardian has the same powers, rights, and duties as a parent, except that he does not have the liabilities of a parent to third persons. He has custody of the ward and the right to decide where the

ward shall live. He provides for the care, training, and education of the ward and takes care of his clothing and other personal property. He decides what medical care the ward shall receive. If the ward has no conservator, the guardian collects money or other property due to the ward, uses the money or property for the ward's support, and saves any excess for the ward. 91A-5-312

Is there any supervision of a guardian's use of a ward's money or other property?

The guardian may not use the ward's property to pay for room and board he has furnished to the ward without a court's approval. The guardian reports the condition of the ward and the ward's property to a court. If the ward has a conservator, the guardian pays to the conservator any excess funds and accounts to the conservator for what he has spent; also the guardian can receive reasonable sums for his services and room and board furnished to the ward, as agreed on by the guardian and the conservator. 91A-5-312

PROTECTION OF PROPERTY OF PERSONS UNDER DISABILITY AND MINORS

Under what circumstances will a court appoint a person to manage the property of a retarded person or minor?

A court will appoint a conservator to manage the property of a minor if it finds that necessary to provide management for his property or business affairs or to get funds for his support or education.

A court will appoint a conservator for an adult if it finds that he cannot manage his property and affairs effectively because of mental illness, mental deficiency, physical illness or disability or certain other reasons and it finds that the appointment is necessary to provide management for his property or to get funds needed for his support or that of his family. 91A-5-401

Who may seek appointment of a conservator?

The person to be protected, any person interested in his welfare or any person who would be hurt by lack of management of his property may petition for an appointment of a conservator. 91A-5-404

Who must be notified of a proceeding to appoint a conservator?

Notice must be given to the person to be protected and his spouse or, if he is unmarried, his parents. Notice must also be given to other interested persons who file requests for notice; this includes governmental agencies which may pay benefits to the person to be protected. 91A-5-405; 91A-5-406

If a petition is filed for appointment of a conservator for a person, what protection is given that person?

If the reason for the appointment is minority, the court may appoint an attorney for the minor if it finds his interests may not otherwise be adequately represented. If the reason is not minority, the court must appoint a lawyer to represent the person unless he has counsel he has chosen. The court may also direct that he be examined by a doctor, preferably one not connected with any institution in which the person is a patient, and the court may also send a visitor to interview the person to be protected. 91A-5-407

Can a court act directly to protect the property of a person who needs protection?

A court can make orders to protect or apply property of the person to be protected, while a petition for appointment of a conservator is pending.

In the case of a minor, a court can exercise all powers over the property of a minor which may be necessary for the best interests of the minor, his family and members of his household.

In the case of disabilities other than minority, a court has broad powers over the property of the disabled person. For example, it can exercise powers of appointment, make contracts, create trusts, exercise options to buy property, make gifts, elect options under insurance policies, change beneficiaries, take the cash surrender value of insurance policies, exercise a right to an elective share of an estate of a dead spouse, or renounce transfers of property. The court may exercise these and other broad powers either directly or through a conservator. 91A-5-408; 91A-5-410

Do any particular persons have prior claims to be appointed conservators?

The Code does specify an order in which persons are to be considered, but the court has a duty to select the person best qualified among persons with equal priority and may pass over a person

having priority for good cause. The priorities stated in the Code are: (a) a conservator, guardian or trustee from another jurisdiction, (b) a person named by the protected person if he is fourteen years old or older and can make an intelligent choice, (c) the protected person's spouse, (d) his adult child, (e) his parent or a nominee of a dead parent, (f) any relative with whom he has been living for more than six months, and (g) a nominee of the person who is caring for him or paying benefits to him. 91A-5-410

Must a conservator post a bond?

The court may require a conservator to furnish a bond. 91A-5-411

Is a conservator paid for his services?

A conservator is entitled to a reasonable compensation from the estate of the protected person. 91A-5-414

Can a conservator be removed or resign?

A conservator may be removed for good cause, on notice and hearing, or may have his resignation accepted by a court. Any person interested in the welfare of the protected person may petition for an accounting by a conservator or for his removal. 91A-5-415; 91A-5-415

How careful must a conservator be in managing the property of the protected person?

He must use the care required of a trustee, which is generally the care used by a prudent person who is managing property with a view to protecting the principal as well as producing income. 91A-5-417

What must a conservator do to show what property the protected person has and how he has managed it?

He must file an inventory after he has been appointed and must account for his management of the property when he resigns or is removed and at such other times and the court may direct. 91A-5-419

Can a conservator buy property from the estate of the protected person?

He can, but a transfer by him to himself or certain related persons is voidable unless the court has approved the transaction after notice to interested persons. 91A-5-422

What powers does a conservator have to manage the protected person's property?

His powers are very broad, so that he can do virtually anything that an owner of property can do, without need to get a court order first. He also has the powers of a guardian if the protected person is an unmarried minor who has no one else acting as a parent or guardian. 91A-5-424

What powers does a conservator have to distribute a protected person's income or principal?

A conservator has broad powers, without the need for a court order, to distribute income or principal for the support or education of the protected person or his dependents in their accustomed standard of living. If the disability of a protected person ceases, the conservator has a duty to distribute his property to him. If the disabled person dies and no one else is appointed personal representative, the conservator may become personal representative and distribute the protected person's estate. 91A-5-425

Is it possible to give a conservator more or fewer powers than those specified in the Code?

The court may give a conservator additional powers which the court itself could exercise or may limit the powers of a conservator? 91A-5-426

What liability has a conservator to the creditors of a protected person?

He is required to pay just claims from the estate of the protected person but generally is not personally liable to pay them. 91A-5-428; 91A-5-429

Is there a procedure for ending a conservatorship?

The Code provides that the protected person, his personal representative if he is dead, the conservator, or any other interested person may petition the court to end the conservatorship. If the court grants the petition, title to the protected person's property passes to him or his successors. 91A-5-430

MONTANA STATUTES REGARDING CAPACITY TO CONTRACT AS THEY AFFECT DEVELOPMENTALLY DISABLED INDIVIDUALS

Julio Morales, Attorney-at-Law, Missoula, Montana.

The following Montana Statutes specify as follows:

13 - 201 Who may contract. All persons are capable of contracting, except minors, persons of unsound mind, and persons deprived of civil rights.

13 - 202 Minors and persons of unsound mind, capacity to contract. Minors and persons of unsound mind have only such capacity as is the kind by Sections 64-101 to 64-114 of this code.

64 - 104 Persons of unsound mind. Persons of unsound mind, within the meaning of this code, are idiots, lunatics, imbeciles, and habitual drunkards.

64-108 Minor or person of unsound mind cannot disaffirm contract for necessaries. A minor, or a person of unsound mind, cannot disaffirm a contract, otherwise valid, to pay the reasonable value of things necessary for his support or that of his family, entered into by him when not under the care of a parent or guardian able to provide for him or them.

64 - 110 Contracts of persons without understanding. A person entirely without understanding has no power to make a contract of any kind, but he is liable for the reasonable value of things furnished to him necessary for his support or the support of his family.

64 - 111 Contracts of other persons of unsound mind. A conveyance for other contracts of a person of unsound mind, but not entirely without understanding, made before his incapacity has been judicially determined, is subject to rescission, as provided in the chapter on recission of this code.

64 - 113 Minors and persons of unsound mind liable for wrongs, but not for exemplary damages. A minor, or person of unsound mind, is civilly liable for a wrong done by him, but is not liable in exemplary damages unless at the time of this act he was capable of knowing it was wrongful.

From the foregoing Statutes as well as from the Court Decisions interpreting same, it is clear that the developmentally disabled can easily fall into the category of "person of unsound mind" depending on the degree of incapacity or disability. Given the present philosophy that the developmentally disabled should be subjected only to the least restrictive alternative, it is incumbent that only those that are incapacitated to a more serious degree be subjected to guardianships and conservatorships. In this area, the Statutes of Montana provide as follows:

91A-5-101 (1). "incapacitated person" means any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, or other cause (except minority) to the extent he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person.

PRACTICAL SUGGESTIONS FOR INTERVIEWING A CLIENT RELATING TO DISABILITIES

Julio Morales, Attorney-at-Law, Missoula, Montana

Generally, two areas must be discussed with the client: (1) providing for present care of the disabled person and (2) providing for future care of that person.

(1) Regarding the disabled person's present care, the attorney should be aware of the degree of retardation or other disabilities, his physician's and social worker's names, and the family situation. Likewise, the attorney should know the abilities of the developmentally disabled (DD).

Next the attorney should determine whether the DD is capable of self-support and of adequately handling his personal affairs as well as his assets. If he is not, and the DD is over 18, the attorney should consider the need for establishing a guardianship and/or conservatorship, which would seriously affect the capacity of the DD to continue to enter contracts, own and operate a motor vehicle, and have a driver's license, etc. In the alternative a parent or companion may be selected to handle the affairs on an informal basis, but he should know that in certain situations such as a medical emergency the disabled person may be refused services or other relationships on the basis of his lack of capacity. A parent of a minor disabled person may agree to execute a power of attorney granting another individual such informal control, or may execute a durable power of attorney over such parent's own affairs in the event the parent becomes disabled.

Care should be taken in selecting the residence, care, training, and education and standard of living of the disabled person. A companion may be selected who may also provide adequate transportation. Insurance, work, and driving should be adequately arranged. The local bank, grocery store, drug store, and other commercial establishments may be introduced to the disabled person if he is capable of handling his own affairs so that he may carry on as a normal person in these establishments.

A group home may certainly be considered as an additional informal choice short of a guardianship, where the corporation and its individuals in charge of the group home are given the care over the disabled person. Such arrangement is feasible even where a guardianship and conservatorship already exist.

Finally, the attorney must learn whether the disabled person has any assets. Many times parents have already placed property in their joint names with the disabled person. Care should be taken to avoid these situations and to change the names in the title where possible without gift tax, liabilities and thus insure the person continues to qualify for public benefits. Perhaps a specific limited power of attorney or a present trust may be employed, but these may disqualify the person from benefits as discussed below.

(2) Next the attorney should consider the needs for the future. The attorney should also plan for the future and carefully plan and draft a will to fill the needs of the client regarding whether assets should be left to the disabled person, whether a guardian should be appointed by Will, or whether other alternatives should be followed.

In determining whether assets should be left to the disabled person, the attorney and client should be thoroughly familiar with the benefits available through public and charitable organizations. Typically where assets are left or made available to the disabled person, he or she stands to lose most, if not all, public assistance, save where the benefits are based on the principle of insurance rather than assistance. Thus, he or she will typically lose all supplemental security income.

Such public and other assistance projected over the life of the disabled person amounts to several thousand dollars per year which could easily be lost if that person is left even as little as fifteen hundred dollars in assets. Since intestate laws applicable whenever a person dies without a Will automatically award the disabled person a proportionate share in the estate, it is imperative that a Will be drafted immediately declaring that the disabled shall receive no share in the estate which is otherwise being left to the other heirs, typically the brothers and sisters.

The Will can also provide for the situation when other heirs do not survive, or do not exist at all. Rather than automatically leaving the estate to the disabled person, the parties should consider other alternatives.

One such alternative is to employ a trust whereby the property is left to a trustee for the benefit of the disabled person, and others where applicable, usually to pay the income from the trust to these beneficiaries, and upon their reaching a certain age transferring all assets to them, or upon their death transferring all assets to remainder beneficiaries. Normally where disabled beneficiaries exist the trustee is directed not to pay benefits to him except when the trustee in his discretion believes the same is necessary to maintain a minimum standard of care; such is referred to as a "discretionary trust." In addition the trust may prohibit the beneficiary's share from being promised or assigned to creditors and thus prevent the beneficiary from spending his share before he receives it; such is referred to as a "spendthrift" trust. Yet all parties must be immediately informed that a disabled person who is a beneficiary under a trust with these provisions will almost surely lose all public assistance, since regulations presently provide that such trusts will be deemed as assets disqualifying the beneficiary from public assistance, and thus other alternatives must be discussed.

A second alternative is to give a brother or sister the share which otherwise would have been left outright to the disabled person in the hopes the particular brother or sister would set aside that share to be used only should the disabled brother or sister need it for some emergency. A modification of this alternative is to leave the assets in trust for the benefit of the brothers and sisters only, employing discretionary

and spendthrift provisions; the trustee from time to time could in his discretion and when requested by a brother or sister disburse funds to him or her to be spent hopefully for the benefit of the disabled person. If the brother or sister spends the money otherwise, he stands to not receive additional discretionary shares.

Another modification of this second alternative would be to leave the brother or sister or other heir a limited power of appointment or limited power of attorney with the hope that it would be used to benefit the disabled person. However, these forms will be closely scrutinized by public agencies and could easily be interpreted to disqualify the disabled person from benefits.

The third alternative which works, at least in Montana under our present laws, is to use the assets to incorporate a non-profit corporation which would set up a group home or similar institution with no obligation to support the disabled person, save a moral obligation. The disabled person continues to receive public assistance, and at the same time the non-profit corporation contracts for services with the state for additional benefits. In this writer's opinion, this non-profit corporation alternative is the best alternative.

In determining whether a guardian should be appointed by Will, the same considerations generally apply as discussed under (1) above whether to appoint a guardian presently. In addition, however, a parent of a disabled person should realize that upon his demise someone will have to fill the vacancy thus left and the only sure way is to appoint a guardian by Will. Care in selecting the guardian must be exercised, and the person so chosen should be contacted to make sure the arrangement is acceptable. Typically, the Court will automatically appoint that person provided the will is otherwise properly executed, and provided the disabled person if over 14 years old and of reasonable mental ability and does not wish a different individual appointed and this is otherwise in the best interest of the person.

The parent may appoint a guardian for either a minor or incapacitated person over 18 years old. Likewise the spouse of a married individual who is incapacitated may by Will appoint a guardian for that person. The person for whom a testamentary appointment for guardian has been made may file a written objection resulting in automatic denial of the appointment pending proper evidentiary proceeding in court to determine the need for appointment of a guardian, provided the person be over 18 years old.

The other alternatives insuring adequate care of the person, as opposed to the estate, of the disabled person, include setting aside a share of the estate in trust to another heir or other trustee to be spent for payment to a companion or nurse who cares for the disabled person on a full-time basis; however, this alternative might be closely scrutinized by public agencies in determining whether it disqualifies the person from public benefits, although a good contrary argument can be made that no money is being spent directly by the disabled person and thus he should lose public assistance.

Another alternative would call for the use of a limited power of appointment or limited power of attorney.

In the event a parent cannot decide upon a potential guardian or companion or trustee, he may specify a negative nomination. Thus he may name those he expressly does not wish to act as such guardian, companion, or trustee.

Naturally in drafting the Will all other relevant estate planning considerations of a general nature and not geared specifically to the needs of the disabled heir must be considered. These include tax consequences, the needs of other family members, charitable intentions and so on. Further the attorney must carefully discuss the needs of the client should the client himself become disabled in the future. Finally, such other miscellaneous matters as insurance needs should be considered.

The foregoing is not intended to cover every possibility, but is clearly intended as a few practical suggestions based on this author's experience. Moreover, these suggestions may become obsolete with changes in laws and regulations as well as by development of new ideas. Perhaps the most important advise which can be given is that a competent attorney is a must in these areas, and other professionals in the estate planning team, such as the trustee, accountant, insurance advisor, and others should likewise be consulted when necessary. Self-help by a layman in these areas may prove catastrophic.

SSI and the DEVELOPMENTALLY DISABLED

Supplemental Security Income (SSI) was established in October, 1972 to provide income for the needy, aged, blind or disabled. Developmentally disabled persons are eligible for SSI, if they meet the financial and disability eligibility requirements.

Specifically, the person must prove that he has no more than $1,500.00 in property, savings or trust and that his monthly income does not exceed approximately $167.00. The developmentally disabled person must have documented evidence of his disability (mental retardation, epilepsy, cerebral palsy, autism or other related neurological disorders) and further show that this condition constitutes a substantial handicap rendering the person unable to sustain employment.

Earned income: a developmentally disabled SSI recipient earning wages must report his earnings to Social Security, if the wages exceed $65.00 per month. Any amount over $65.00 is divided by two and subtracted from the individual's SSI income. The SSI must then be adjusted which takes several months and readjusted if the person's income changes (which it often does).

Unearned income: if a SSI recipient receives more than $20 per month, it is deducted dollar for dollar from the recipient's monthly SSI payment. Although SSI has shown to be a valuable resource in providing monthly income, it does have some drawbacks.

If parents choose to will property or financial resources to their developmentally disabled son or daughter, they may inadvertently render the person ineligible for SSI benefits. For example, if a trust was set up of over $1,500.00, the person would no longer be eligible for SSI. For a person living in a group home, the effect is greater. They not only lose the $167.80/month, but also lose the state supplement of $104.00/month. Therefore, this amount must be paid out through the trust. In losing SSI the person also loses Medicaid. Then the medical bills, too, must be paid from the trust. When the trust recedes to under $1,500.00, then the person may reapply for SSI. It again takes several months for payments to be processed.

If a parent leaves their son or daughter a home with a value exceeding $1,500.00 and the person does not live in the home, then this is regarded as a financial resource and renders the person ineligible for SSI.

Several of my clients have had trust funds set up for them by well-meaning relatives. It should be recognized that trusts can sometimes be a liability to a developmentally disabled person, specifically in the areas of Medicaid and state supplementation for group home or foster home living.

Currently Non-Title 20 state money is available to fund non-income eligible persons for services at a day activity program and transportation to and from the program.

It is possible that in the future SSI requirements will be revised. However, currently if you are thinking of setting up a trust for or willing property to your developmentally disabled son or daughter, please first review the implications for SSI eligibility with your local Social Security Office and your attorney.

Incorrect Use of Trust
An Actual Case

Jan Riles
Social Worker, Missoula, Montana.

Many times relatives set up trust funds for a developmentally disabled person without realizing that this may in fact render the person ineligible for other funding and some services.

The following actual case provides an example of possible problems which may arise when a trust has been set up.

A developmetally disabled woman, A. B., had a trust fund set up for her. The fund consisted of Veterans' Administration payments and Social Security benefits which had accumulated for her while she was in a state institution. A trustee was appointed.

The trust amounted to over $1,500 initially. Therefore, A. B. was not eligible for Medicaid, Supplemental Security Income or the State supplement for group home living. The monthly V. A. and Social Security payments were sent to the trustee to be placed in the fund. Each month the trustee paid the costs for A. B.'s group home living expenses (including training money), medical bills and other expenses from the trust. Fortunately, Non-Title 20 (state funds) were available for A. B.'s espenses of attending a sheltered workshop. Essentially, the trust was increased by approximately $200 per month and reduced by approximately $400 per month by expenses.

When A. B. needed new dentures the group home managers requested the money from the trustee and were refused on the basis that this would use up a portion of the trust and shorten its longevity. A. B. was not eligible for Medicaid and so there was no way to pay for her dentures. Several letters were sent to the trustee emphasizing the need for the dentures and A. B.'s desire to have them.

Finally, Legal Services was contacted to represent A. B. in her request and need for dentures. The Legal Services lawyer presented further documentation of the need for dentures and emphasized that when the trust was depleted, public assistance funds and Medicaid would be available for A. B. The trustee then agreed to release the trust. The group home managers became payee for the monthly checks and the Veterans' Administration handled the balance of the savings. The savings at this time amounted to less than $1,500 and A. B. became eligible for Medicaid and will be receiving her dentures.

This example illustrates some of the problems that possibly may be encountered when a trust fund has been established for a developmentally disabled person. If the decision has been made to set up a trust, the following suggestions may be helpful:

1. Choose a trustee who is familiar with the developmentally disabled person and or with D.D. services and funding sources.
2. Provide adequate documentation of need to the trustee when specific funds are being requested.
3. Inform the social worker or case manager for the D.D. person of the condition of the trust and the address of the trustee, so that the worker can keep the trustee informed of the client's needs as identified in the Individual Habilitation Plan.
4. Check with Social Security prior to setting up the trust to find out which benefits would be effected.
5. Contact your local welfare office to find out which medical benefits and/or social services would be effected.
6. Discuss with your lawyer alternative legal means of leaving money to your developmentally disabled relative.

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